

**Tastee Vending, Inc. and Teamsters Local Union
No. 429, a/w International Brotherhood of
Teamsters, AFL-CIO. Case 4-CA-23716**

September 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge and an amended charge filed by the Union on April 13 and May 22, 1995, respectively the General Counsel of the National Labor Relations Board issued a complaint on June 29, 1995, against Tastee Vending, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge and complaint, the Respondent failed to file an answer.

On August 31, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On September 5, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 9, 1995, notified the Respondent that unless an answer were received by August 16, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office and facility located in Reading, Pennsylvania, has been engaged in the business of selling products through vending machines. During the year preceding issuance of the complaint,

the Respondent, in conducting its operations, purchased and received goods and supplies valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent and the Union have been parties to a collective-bargaining agreement effective by its terms from April 15, 1992, to April 14, 1995 (the Agreement) pursuant to which the Respondent recognized the Union as the exclusive bargaining representative of the Respondent's routemen and mechanics. At all material times, the unit has been appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About March 30 and April 13, 1995, the Union orally requested the opportunity to review the Respondent's financial records. About April 4 and 20, 1995, the Union, by letter, requested the opportunity to review the Respondent's financial records. This information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about March 30, 1995, the Respondent has failed and refused to furnish the Union with this requested information.

About April 28, 1995, the Respondent reduced the pay of the routemen in the unit by 6 percent, began to require unit employees to pay a \$20 health insurance copay, ceased making contributions to the Union's Pension fund for unit employees, and ceased applying terms and conditions of employment established by the Agreement to new hires in the unit. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

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About April 28, 1995, the Respondent reduced the pay of the routemen in the unit by 6 percent, began to require unit employees to pay a \$20 health insurance copay, ceased making contributions to the Union's Pension fund for unit employees, and ceased applying terms and conditions of employment established by the Agreement to new hires in the unit. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested. Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) since about April 28, 1995, by unilaterally reducing the pay of the routemen in the unit by 6 percent, requiring unit employees to pay a \$20 health insurance copay, ceasing to make contributions to the Union's Pension fund for unit employees, and ceasing to apply terms and conditions of employment established by the Agreement to new hires in the unit, we shall order the Respondent to rescind the unilateral changes, honor the terms and conditions of the Agreement for all unit employees, and make the unit employees whole, with interest, for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to make its unit employees whole by making all union pension fund payments that have not been made since April 28, 1995, and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its request that employees pay a \$20 health insurance copay and its failure to make the required pension fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.¹

ORDER

The National Labor Relations Board orders that the Respondent, Tastee Vending, Inc., Reading, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

- (a) Failing and refusing to furnish Teamsters Local Union No. 429, a/w International Brotherhood of Teamsters, AFL-CIO, requested information which is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit routemen and mechanics.

- (b) Unilaterally reducing the pay of the routemen in the unit by 6 percent, requiring unit employees to pay a \$20 health insurance copay, failing to make its contributions to the Union's Pension fund for unit employees, or failing to apply terms and conditions of employment established by the Agreement to new hires in the unit.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Provide the Union with the requested information.

- (b) Rescind the unlawful unilateral changes, apply the terms and conditions of the collective-bargaining agreement with the Union, effective by its terms from April 15, 1992, to April 14, 1995, to all unit employees, make all required contributions to the Union's Pension fund, and make the unit employees whole for any loss of earnings or benefits or expenses resulting from its unlawful actions as set forth in the remedy section of this decision.

- (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

- (d) Post at its facility in Reading, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish Teamsters Local Union No. 429, a/w International Brotherhood of Teamsters, AFL-CIO requested information which is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit routemen and mechanics.

WE WILL NOT unilaterally reduce the pay of the routemen in the unit by 6 percent, require unit employees to pay a \$20 health insurance copay, cease our contributions to the Union's Pension fund for unit em-

ployees, or fail to apply terms and conditions of employment established by the Agreement to new hires in the unit.

We will not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it requested.

WE WILL rescind the unlawful unilateral changes, apply the terms and conditions of the collective-bargaining agreement with the Union, effective by its terms from April 15, 1992, to April 14, 1995, to all unit employees, make all required contributions to the Union's Pension fund, and make the unit employees whole for any loss of earnings or benefits or expenses resulting from our unlawful actions as set forth in a decision of the National Labor Relations Board.

TASTEE VENDING, INC.